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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,379	03/16/2000	Lecon Woo	1417Y P 418	2449

7590 11/08/2002

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/526,379

Applicant(s)

WOO ET AL.

Examiner

Sandra M. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-33 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-11, 13-24, 26-33 and 35-44 is/are rejected.
- 7) ☒ Claim(s) 3 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Pursuant to entry of the amendment in the response dated August 27, 2002 (Paper No. 10), claims 1-11, 13-33 and 35-44 are pending.

Allowable Subject Matter

2. Claims 3 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. Claims 3 and 25 are deemed to contain allowable subject matter because they specify that the second component of the blend from which the sidewall film(s) are made contains a block copolymer of ethylene and propylene, which copolymer contains 1 to 6% ethylene. The references of record fail to teach or suggest the use of this type of copolymer in films for making containers.

Objection Withdrawn

4. The objection to claims 12 and 34 recited in section 6 of the May 24, 2002 Office Action (Paper No. 9), is withdrawn in view of applicants' amendments in Paper No. 10.

Rejection Withdrawn

5. The 35 USC 112 rejection of claims 9-12, 31-35 and 37, as set out in section 8 of Paper No. 9, is withdrawn in view of applicants' amendments in Paper No. 10.

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Rejections Maintained

add 42-44
→ 6. The 35 USC 103 rejection of claims 1-2, 13, 16-22, 24, and 38-41⁴⁴ as unpatentable over Barney et al (US 6,203,535 B1) in view of Galante (US 5,272,210), as expressed in section 10 of Paper No. 9, is maintained for reasons of record.

7. The 35 USC 103 rejection of claim 23 as unpatentable over Barney and Galante and further in view of Occhiello et al (EPO 0423499 A2), as set forth in section 11 of Paper No. 9, is maintained for reasons of record.

→ 8. The 35 USC 103 rejection of claims 1, 2, 4-8 13-24, 26-30 and 36-41⁴⁴ as unpatentable over Barney in view of Wilhoit et al (US 5,928,740), as stated in section 12 of Paper No. 9, is maintained for reasons of record.

9. The 35 USC 103 rejection of claims 9-12 and 31-35 as unpatentable over Barney and Wilhoit and further in view of Sudo (EPO 0556034 A1), as recited in section 13 of Paper No. 9, is maintained for reasons of record.

Response to Arguments

10. Applicant's arguments filed in Paper No. 10 have been fully considered but they are not persuasive.

The arguments presented in Paper No. 10 will be responded to in the order in which they were stated there.

On page 9, at section B, of Paper No. 10, applicants argue that the objection to claims 12 and 34 is overcome by the cancellation of those claims.

The objection has been withdrawn. See section 4 above.

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On page 9, at section C, of Paper No. 10, applicants argue that the amendments to the claims overcome the 35 USC 112 rejection for lack of antecedent basis.

The 35 USC 112 rejection has been withdrawn. See section 5, above.

On page 10-11, in section E1 of Paper No. 10, applicants argue that the 35 USC 103 rejection based on the combination of Barney and Galante is improper because Galante teaches the random copolymers of random ethylene/propylene copolymers in its blends (page 10, third full paragraph, last sentence), while applicants blends use block copolymers (page 11, first full paragraph, third sentence).

However, only claims 3 and 25—which have been indicated above as containing allowable subject matter—recite block ethylene/propylene copolymers in the claimed blends. The remainder of the claims, which cover the use of any random as well as block copolymers, remain rejected under 35 USC 103.

Applicants appear to be arguing a limitation that is not recited in the claims. Such argument is improper and unpersuasive. See MPEP 2145 (VI).

On page 11, in section E1 of Paper No. 10, applicants argue that Barney fails to teach the polymer blends of the invention, so that, even if the blends of Galante were employed in the Barney containers, the “invention” applicants’ claims would not be obvious.

However, the 35 USC rejection based on the combination of Barney and Galante suggests the use of the Galante blends in the containers of Barney as discussed in section 10 of Paper No. 10. As stated there, the production of films having (a) flexibility at low temperatures and (b) utility in making bags for medical applications is suggested

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by the references as combined. Accordingly, the rejection of claims 1-3, 13, 16-22, 23, 24, 25, and 38-41 for obviousness is proper.

On page 11, in section E2 of Paper No. 10, applicants argue, in summary fashion, that the rejection of claim 23 for obviousness is improper because "Occhiello fails to remedy the deficiencies of the combination of Barney and Galante".

However, the statement that the rejection is lacking with nothing more give the Office little to respond to. Upon reconsideration in view of applicants' argument, the rejection is maintained as proper for the reasons set forth in section 11 of Paper No. 9.

On page 11, in section E3 of Paper No. 10, applicants summarily argue that the 35 USC 103 rejection of claims 1, 2, 4-8, 13-24 26-30, and 36-41 as unpatentable over Barney in view of Wilhoit is improper because Wilhoit does not disclose the blends of the instant claims and, therefore, fails to remedy the deficiencies of Barney.

However, this summary statement does not call for detailed response(s). Upon reconsideration in view of applicants' argument, the rejection is maintained as proper for the reasons set forth in section 12 of Paper No. 9.

On page 12, in section E4 of Paper No. 10, applicants again present a summary argument that the rejection of claims "1, 2, 4-8, 13-24, 36-30 and 36-41[sic] as unpatentable in light of Barney et al, in view of Wilhoit and further in view or Sudo" is not proper.

Note: The examiner assumes, for purposes of this office action, that applicant intended to refer to the 35 USC 103 rejection of claims 9-12 and 31-35 as unpatentable over Barney, Wilhoit and Sudo, as recited in section 13 of Paper No. 9.

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Upon reconsideration in view of applicants' argument, the 35 USC 103 rejection based on the combination of Barney, Wilhoit and Sudo is proper for the reasons set out in section 13 of Paper No. 9.

Lastly, applicants assert, in the last sentence of section E4 of Paper No. 9 (on page 12 thereof), that the claims are patentably distinguishable over the combination of Barney, Wilhoit and Sudo.

However, Paper No. 9 does not detailed assertions supporting this statement. Accordingly, the rejection is deemed proper for reasons already of record.

Final Rejection

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can

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normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
09526379(11)
November 6, 2002